88-872

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

NO:

in the

Supreme Court

of the

United States

October Term, 1988

EDITH HOROWITZ BROIDA,

Petitioner,

vs.

MOIE J. L. TENDRICH,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

EDITH BROIDA, ESQ.
PRO SE
BARNETT BANK BLDG.
420 Lincoln Road
Suite 256
Miami Beach, Fla.
33139
(305) 532- 3431

For Petitioner

5782

QUESTIONS PRESENTED

1. Whether in a case based on 1983 civil rights deprivation even though the defendant is a state court judge the district court and the appeal court can abrogate the Fed. Rules of Procedure providing allegations of the complaint as true where a motion to dismiss is filed by defendant and where the allegations raise issues to be proved as to whether the defendant in fact did not have valid jurisdiction since without valid jurisdiction said judge is not immune to suit for damages as held by this Supreme Court in Dennis v. Sparks, 449 US 24, 66 LEd2d 185, 101 S. Ct. 183,(1980).

2. Whether where the allegations of the complaint raise an

issue of valid jurisdiction having become nullified by defendant judge having had a prior agreement as to how he would rule in a cause, to the injury of petitioner herein, the district and appeal court can refuse to recognize and be in conflict with other district and circuit appeal courts which hold a judge loses his jurisdiction by such prior agreement, as held in Rankin v. Howard, 633 F2d 844 (1980) 9th Cir..

3. Whether in a civil rights case against a state court judge, alleging deprivation of equal protection of the laws resulting in serious financial and other injury from acts taken with deliberate prejudice and malice against petitioner, who is a party in proceedings before him, the lower district and appeal courts can refuse to examine and obtain full evidence for allegations that said

defendant has acted totally without jurisdiction in cases filed in other jurisdictions which he had transferred to himself over which as a probate permanently assigned judge he had no subject matter jurisdiction in a court system where subject matter jurisdiction is assigned to special divisions. Harper v. Merkle, 638 F2d 748, 1981, and where said defendant has deliberately withheld progress on the suits exercising such invalid control to prevent plaintiff below from protecting her property rights. App 1

4. Whether the district and appeal courts must abide by the holding of this Supreme Court in Dennis v. Sparks that a presiding judge who is charged with conspiracy in a case before him must nevertheless present himself as a witness in a

suit against a co-conspirator. App 1,4

5. Whether a state circuit judge entrusted with the awesome responsibility of presiding over the administration of estates loses valid jurisdiction over a probate cause before him by using a personal representative (executor), an attorney, appointed into the probate by a prior judge, to carry out the judge's conspiracy against a party to whom that appointed personal representative, by Florida law, is a fiduciary owing his duty to the estate of which the party holds an interest and to the party's interest as well, required by law to be neutral, objective and not self-serving. In re Estate of Lynagh, 117 So2d 256, Fla.

6. Whether a public official who is an assistant county attorney should be held liable for Rule 11 sanctions where he has de-

liberately misrepresented the law of judicial immunity, the federal rules of procedure, and the structure of the Dade County Court system to protect a defendant judge who is engaged in conspiracy to deliberately injure petitioner.

7. Whether the district court and appeal court can prohibit the enforcement of constitutional guarantees both State and United States of due process and equal protection of the laws by deliberately prohibiting presentation to them of the true applicable facts of the jurisdictional composition of the courts of Dade County which apply to the determination of whether defendant did or did not have valid jurisdiction and thereby immunity from suit.

8. Whether when a local judge is sued in district court a visiting judge should be assigned. App 8

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Petitioner prays that a writ of certiorari issue to review Opinion of the United States Court of Appeal for the Eleventh Circuit entered on August 4, 1988; Petition for Extension of Time to file petition for rehearing of judgment issued and mailed as mandate on September 01, 1988 denied on October 4, 1988.

OPINIONS BELOW

The Order of the United States District Court, Southern District of Florida granting Defendant's motion to dismiss, denying plaintiff's motion to strike defendant's motion for protective order, is dated September 18, 1987, is not published, fn 1 and set forth in Appendix, page 1.

fn 1. Appendix shall be cited as App.

The decision of the United States District Court denying plaintiff's motion to vacate order of dismissal is dated September 29, 1987, and set forth in the Appendix at page 3 .

The decision of the United States District Court granting motion for protective order of defendant, dated August 12, 1987 by an alternate judge is set forth in Appendix at page 4 .

The decision of the United States Court of Appeals for the Eleventh Circuit affirming the order of dis - missal per curiam, judgment entered August 4, 1988 issued as mandate on first notice dated September 01,1988, is not published, at appendix p 13 .

The decision of the United States Court of Appeals for the Eleventh Circuit denying motion for extension

of time to file rehearing of judg - ment mailed September 01, 1988 dated as judgment August 4, 1988 is set forth in Appendix p 14 .

JURISDICTION

The decision of the Court of appeals for the Eleventh Circuit was entered on August 4, 1988. The judgment was not mailed to petitioner on that date but was held until September 01, 1988 and then mailed as the mandate of the court. Petitioner's motion for extension of time to file for rehearing in view of the failure of the court to notify timely of the judgment in contravention of Rule 36 and 41 a) was denied September 26, 1988. Oral argument requested by petitioner was summarily by the court not noticed

and not provided in contravention of Rule 34 b). It is more likely the brief was not read and therefore the request properly included in the brief was overlooked. App 13,14

This Court's jurisdiction is is invoked under 28 USC Sec. 1254 (1) and Sec. 2101 (c).

QUESTIONS PRESENTED

1. Whether in a case based on 1983 civil rights deprivation even though the defendant is a state court judge the district court and the appeal court can abrogate the Fed. Rules of Procedure providing allegations of the complaint as true where a motion to dismiss is filed by defendant and where the allegations raise issues to be proved as to whether the defendant

in fact did not have valid jurisdiction since without valid jurisdiction said judge not immune to suit for damages as held by this Supreme Court in Dennis v. Sparks, 449 US 24, 66 LEd2d 185, 101 S.Ct 183, (1980).

2. Whether where the allega - tions of the complaint raise an issue of valid jurisdiction having become nullified by defendant judge having had a prior agreement as to how he would rule in a cause, to the injury of petitioner herein, the district and appeal court can refuse to recognize and be in conflict with other district and circuit appeal courts which hold a judge loses his jurisdiction by such prior agreement, as held in Rankin v. Howard

3. Whether in a civil rights case against a state court judge, alleging deprivation of equal protection of the laws resulting in serious financial and other injury from acts taken with deliberate prejudice and malice against petitioner, who is a party in proceedings before him, the lower district and appeal courts can refuse to examine and obtain full evidence for allegations that said defendant has acted totally without jurisdiction in cases filed in other jurisdictions which he had transferred to himself over which as a probate permanently assigned judge he had no subject matter jurisdiction in a court system where subject matter jurisdiction is assigned to special divisions. Harper v. Merkle, 638 F2d 748,

1981, and where sa'd defendant has deliberately withheld progress on the suits exercising such invalid control to prevent plaintiff below from protecting her property rights..

4. Whether the district and appeal courts must abide by the holding of this Supreme Court in Dennis v. Sparks that a presiding judge who is charged with conspiracy in a case before him must nevertheless present himself as a witness in a suit against a co-conspirator.

5. Whether a state circuit judge entrusted with the awesome responsibility of presiding over the administration of estates loses valid jurisdiction over a probate cause before him by using a personal representative (executor),an attorney.

appointed into the probate by a prior judge, to carry out the judge's conspiracy against a party to whom that appointed personal representative, by Florida law, is a fiduciary owing his duty to the estate of which the party holds an interest and to the party's interest as well, required by law to be neutral, objective and not self-serving. In re Estate of Lynagh, 117 So2d 256, Fla.

6. Whether a public official who is an assistant county attorney should be held liable for Rule 11 sanctions where he has deliberately misrepresented the law of judicial immunity , the federal rules of procedure, and the structure of

structure of the Dade County Court system to protect a defendant judge who is engaged in conspiracy to deliberately injure petitioner.

7. Whether the district court and appeal court can prohibit the enforcement of constitutional guarantees both State and United States of due process and equal protection of the laws by deliberately prohibiting presentation to them of the true applicable facts of the jurisdictional composition of the courts of Dade County which applies to the determination of whether defendant did or did not have valid jurisdiction and thereby immunity from suit.

8. Whether when a local judge is sued in district court a visiting judge should be assigned.

CONSTITUTIONAL PROVISIONS STATUTES AND RULES INVOLVED

A. This case was brought on grounds of constitutional depriva - tion of Fifth Amendment to the United States Constitution, which provides:

> No person shall be deprived of life, liberty, or property without due process of law.

1. The Thirteenth Amendment:

> Neither slavery or involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. The Fourteenth Amendment

> Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. This case was brought by virtue of federal statutes under Title 42, USC, Sec. 1983.

Sec. 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State of Territory of the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

C. Constitutional and statutory jurisdiction of the federal case has not been put in issue.

STATEMENT OF THE CASE

This is an action based on federal civil rights deprivation of equal protection of the laws provided by the guarantees of the United States Constitutions' Fifth, Thirteenth, and Fourteenth Amendments, and federal statute Title 42, USC, Sec. 1983 providing civil suits for damages where such deprivation is caused by public officials.

The Complaint alleges the defendant, a state court circuit judge, permanently assigned to the special probate division, whose actions of constitutional deprivation were taken under color of law as an acting judge of the Eleventh Circuit of Dade County, Florida has caused serious deliberate deprivation of property rights

of plaintiff through disqualifying personal interest and prejudice, not judicial error, and abrogated mandatory state statutes providing for the protections he abrogated, and state stare decis as to the issues in the cause.

That he has further abused his judicial trust by using an attorney, appointed into the cause by a prior judge who had been disqualified for prejudice against petitioner/plaintiff. The attorney appointed as a personal representative (executor), held in such position to the high standard of a trustee by Florida law requiring him to administrate the estate in probate for the benefit of all interested parties and creditors, defend claims of debts against

the estate but not intercede in contests between heirs or represent any heir's interest or his own personal interest. In re Estate of Lynagh, 177 So2d 256.

That in fact Defendant judge used the appointed attorney as his emissary in breach of that attorney's fiduciary duty to obtain transfer of cases filed in the appropriate general jurisdiction of the circuit court to defendant as probate judge. In Woolf v. Reid, 389 So2d 1026, 1980, the 3rd District Court of Appeals of Florida held a probate judge cannot use an administrator as his emissary, that the duty of the administrator is to the estate, not to the judge.

One of the cases so transferred was a suit appropriately filed in gen-

eral jurisdiction equity to establish an interspousal agreement between decedents which resulted in valid lifelong held mutual and reciprocal wills upheld in Florida law. The suit was filed when the prior judge, disqualified for prejudice admitted an invalid will to probate five years after all interested parties at time of such admmssion to probate had entered into written agreements declaring that invalid will invalid, and contested it in litigation for two years finally removing its propoment. The husband, decedent, had admitted his wife's will to probate as her representative.

The equity suit is antagonistic to the will in probate and can result

in the equity judge enjoining the probate proceeding and any distribution of the estate pending determination. In addition all the present interested heirs settlement written agreements holding the mutual will the valid will is binding by Florida Statutes 733.815, and 732.801 (4) because it is a disclaimer which is recorded, making it irrevocable.

Another suit is for breach of contract by those who entered into the agreement six years after it was executed and performed by plaintiff, and request jury trial. Probate court does not have jury trials, and a probate judge has no jurisdiction for a suit on breach of contract between heirs.

The third suit transferred is in

tort against the attorney representing a minor, the grandson of petitioner, who began litigation for his own benefit to incur fees when his client had an agreement to receive her interest under the invalid will for herself and child.

Said Defendant has held plaintiff in contempt for refusing to abrogate the settlement agreement which upholds the mutual will making her a half equal heir and personal representative while the invalid will divides the estate into thirteen equal shares, one to her, and was prepared six months after death of decedent's wife, one month before his at 83, who had been senile for nine years and

physically ill. The invalid will making a different disposition of the estate was prepared by a representing attorney for the decedent then acting as personal representative of his wife's estate. The attorney received three equal shares for himself and family. In Florida law it is considered undue influence.

Plaintiff below was business manager for the business of her parents, tax preparer for nine years for them, managed their home in which she lived with them. She had already served five years as personal representative, tax preparer, had represented her parents for five years as attorney defending against an eminent domain action against their residence and had

continued that action another five years and represented in will contest against the invalid will for two years initially all on the family agreement. To do all this she had to invest her own personal money of $40,000. since the estate was insolvent at death having only $3400. and claim to the eminent domain cause.

Under the valid will petitioner and her brother, the only issue of decedent and his wife are sole equal heirs, and personal representatives. The value of the eminent domain property at death was $100,000 offered by the condemnor, in 1978, in 1981 after two trials and one appeal a jury verdict was $300,000. She took an appeal and reversed it, and in 1984 settled the case for $400,000.

Defendant judge after repeated motions from plaintiff refused to release the three cases and also has kept them from progressing depriving plaintiff of her right to protect her property and of equal protection of the law to use the court for such protection.

The complaint alleges that this cause was assigned to Defendant by special selection of him after the probate judges were disqualified. He was a general jurisdiction judge and a close personal friend of disqualified prior judge Edmund Newbold who is sued in another case and who in every way possible has continued to control the cause in probate. As an inducement to take the case he was promised a perma-

nent position in the probate division on the coming retirement of one of the four judges, which came to pass six months after his assignment.

Defendant further has refused to hold hearing on the statutorily binding settlement agreements, has stricken plaintiff's motion for hearing, has stricken her petition to revoke the invalid will, which is nevertheless invalid. He conspires not with the prior judge alone but with the appointed guardian-ad-litem, and the private attorney who began the litigation and the attorney who induced breach of agreement of the disclaiming interested parties.

At the initial hearing before him in 1985 he announced he did not intend to return plaintiff's investment, and has announced he will sur-

charge plaintiff for taking appeals and filing suits to protect her. This suggestion was made by prior Judge Newbold to the attorney who began the litigation who thereupon brought a motion for same.

The prior Judge Newbold stated his dislike of plaintiff at the hearing on his disqualification.

Petitioner has taken numerous appeals to the state appeal and Supreme court to no avail. The appointed personal representative, who has no qualms about breaching fiduciary duty specializes only in probate and represents in every appeal representing the other interested parties. He is appointed by all probate judges and for this reason, that one cannot win against him,he was appointed into the cause

and plaintiff has no duty to be used as an indentured servant on behalf of these lawyers who have caused her thousands of dollars in expenses since they have broken into the estate.

The district court dismissed the suit despite the allegations of Defendant failing to have valid jurisdiction and held Defendant has discretionary authority which gives him qualified immunity. A motion to dismiss by the Rules of procedure treats the allegations as true, therefore they raise the question of whether the judge did have valid jurisdiction, which issues require proof and cannot be dismissed. App 1.

REASONS FOR GRANTING WRIT

An authoritative ruling of this Court is needed to determine for this nation the issue raised in Rankin v. Howard and Beard v. Udall which the Eleventh Circuit has refused to hold as to whether a judge who has entered into a prior agreement as to ruling in favor of a party has invalidated his jurisdiction since that is not a judicial act.

While the independence of judges to rule in a case should be upheld, likewise judges should be advised that if they are prejudiced and refuse to recuse themselves, as in this cause, they can be held to account. - Further, sanctions should be held against the defending county attorney who has misrepresented the law

of every issue. He is a paid public official, paid by taxes acting to protect judges who act in prejudice. He should present the true facts and law.

The Eleventh Circuit systematically refuses to hold judges accountable. It was the Fifth Cicuit before them that held defendant judge accountable in Harper v. Merkle for assuming jurisdiction of a case for personal reasons.

Where judges of a higher court hold judges acting in wrongdoing accountable it increases the respect of the people for the judicial system because they have confidence that there is recourse for such wrongdoing. When they do not it diminishes respect.

THE RULINGS BELOW

The appeal court per curiam affirmed, and denied motion to extend time for rehearing the judgment entered Agust 4, 1988 mailed dated as September 01, 1988 as the mandate. Denial contravened FRApp Proc 40,41.

Nor did they notify of accepting or rejecting request for oral argument contravening Rule 34 (b). App 13

The appeal court rejected a supplemental brief of a workbook text by attorneys explaining the divi - sions of the Dade County Circuit Court and their jurisdiction which is exclusive of each other. Circuit judges can hear all circuit cases to which they are assigned and are in jurisdiction of the division. Defendant's counsel objected authorship by the Dade Bar. It

is a misrepresentation. Article in law reviews are cited, including one written by this petitioner in 1954 for the MLQ. A lawyer writing for a law review is no more or less qualified. The panel from Georgia and Alabama may not be advised of Dade's court structure. Defense counsel has not practiced general litigation for ten years having a permanent job defending judges. He advised another misrepresentation, that any circuit judge can hear any case, which they can, if properly assigned, and within the jurisdictional division, but cannot just take a

case. The appeal court returned the supplemental briefs. The Eleventh Circuit rejects suits against judges. Judge Hatchett of that court dissented to that continuous posture in Dykes v. Hosemann, 743 F2d 1488, 1984.

The Complaint alleges lack of jurisdiction on two counts:

1. Invalidation of jurisdiction by entering into an agreement to rule against plaintiff with the prior disqualified judge, his personal friend, for a transfer to probate division on the upcoming retirement of a judge which came in six months after he took the assignment.

The Eleventh Circuit has refused to follow the 9th Circuit in Rankin v. Howard. 633 F2d 844, 1980:

> " a judge's prior private agreement to decide in favor of one

> party is not a judicial act for the purpose of judicial immunity... and proof of an agreement could form the basis of liability whether or not the judge was immune from liability for subsequent judicial acts."

Beard v. Udall, 648 F2d 1264, 1981 follows Rankin. This holding protects rights.

2. The second count of lack of jurisdiction is his deliberate transfer to him as a probate judge of cases over which he has no jurisdiction to control them. Probate division is established for administration of estates, will contests, and matters provided by probate statutes such as removal of personal representative, guardians,and their appointment. There is a probate clerk, ex parte clerks who

assist lawyers for the judges. Probate appeals are filed with the probate clerk. No suits can be filed other than administration of the estate. There are no jury trials. The following suits are filed in general jurisdiction: For constructive trust in equity, Mayer v. Cianiolo, 10 FLW 424, Fla, 1985; patent infringement against personal representative, Van Dusen v. Southeast Bank, 10 FLW 1047, 1985, in federal court, Utley v. Graves, 258 F. Supp 950, 1966, by judgment creditor of beneficiary; Blatt v. Green, against personal representative and their lawyer for failing to observe settlement agreement, 456 So2d 949, 1984:

> "If recovery is for the beneficiary individually and not the estate then whether or not

> the estate administration is pending jurisdiction is in the circuit court." 3DCA,Fla.

Knowing that district judges had practiced before or sat as judges in circuit Dade County a visiting judge was requested and denied by the Chief Judge, App. 8.

CONCLUSION

The Petition for Writ of Certiorari should be granted and the dismissal reversed. The ruling of Rankin v. Howard should be upheld and jurisdiction further invalidated for the use of the personal representative.

Respectfully submitted,

Edith Broida, Esq., Pro Se for Petitioner
420 Lincoln Road, St 256
Miami Beach , Fla 33139
305-532-3431

CERTIFICATE OF SERVICE

It is hereby certified three true and correct copies of the Petition for Writ of Cetiorari were furnished by United States mail this 1 day of November, 1988 to Roy Wood, Esq., Ass't County Atty, 111 N. W. Flagler Street, Miami, Fla., 33128.

Edith Broida, Esq.

A P P E N D I X

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 87-1310-CIV-RYSKAMP

EDITH HOROWITZ BROIDA,

Plaintiff,

vs.

MOIE J. L.. TENDRICH,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S MOTION FOR PROTECTIVE ORDER

As this Court has previously ruled in the companion case of Broida v. Newbold, Case No. 87-1309-Civ-Ryskamp, a judge is subject to a qualified immunity if he shows he has acted within the scope of his discretionary authority. Further, plaintiff has not met her burden of establishing that Judge Tendrich violated applicable law. See,

Ziegler v. Jackson, 716 F2d 847,849 (11th Cir. 1983); Marrero v. City of Hialeah, et al., 581 F.Supp 1207, (S.D. Fla. 1984), affirmed, 774 F2d 1177 (1985). It is therefore

ORDERED and ADJUDGED that defendant's motion to dismiss is GRANTED. It is further,

ORDERED and ADJUDGED that plaintiff's motion to strike defendant's motion for protective order is DENIED in light of the fact that this motion is now moot.

DONE and ORDERED at the United States District Court, Miami, Florida this 18th day of September, 1987.

Kenneth L. Ryskamp
UNITED STATES DISTRICT JUDGE
cc: all counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 87-1310-Civ-Ryskamp

EDITH HOROWITZ BROIDA

v.

MOLE J. L. TENDRICH

_____/

This cause is before the court upon plaintiff's motion to vacate order of dismissal filed September 25,1987.

After careful review of the pleadings and the court being fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that said motion is DENIED.

DONE and ORDERED in chambers at the United States District Courthouse, Miami, Florida this 29 day of September, 1987.

Kenneth L. Ryskamp
UNITED STATES DISTRICT JUDGE

cc: to all counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 87-1310-CIV-RYSKAMP

EDITH HOROWITZ BROIDA,

Plaintiff,

vs.

MOIE J. L. TENDRICH,

Defendant.
_____/

ORDER GRANTING MOTION FOR PROTECTIVE ORDER

THIS CAUSE is before the court upon the defendant's motion for protective order on behalf of Judge Tendrich filed August 10, 1987. In Harlow v. Fitzgerald, 457 U. S. 800, 819 (1982), the United States Supreme Court held that "where an official's duties legitimately require action in which clearly established rights are not implicated, the public interest may be better served by action taken !with inde-

pendence and without fear of consequences.'" See also, Mitchell v. Forsyth, 472 U.S. 511 (1985). Based on the foregoing and after due consideration, it is hereby:

ORDERED and ADJUDGED that the defendant's motion for protective order is GRANTED, nunc pro tunc as of oral ruling August 12, 1987.

DONE and ORDERED at the United States District Courthouse, Miami, Florida, this 13 day of August, 1987.

Alcee L. Hastings
UNITED STATES DISTRICT JUDGE

cc. counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. : 87-1310-Civ-Ryskamp

EDITH HOROWITZ BROIDA

v.

MOIE J. L. TENDRICH

_____/

This cause is before the court upon plaintiff's motion for summary judgment filed September 25, 1987.

After careful review of the pleadings and the court being fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that said motion is DENIED As defendant's motion to dismiss was granted on September 18, 1987 this motion is moot.

DONE and ORDERED in chambers at the United States District Courthouse, Miami, Florida this 29 day of September 1987.

Kenneth L. Ryskamp
UNITED STATES DISTRICT JUDGE

cc: to all counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 87-1310-Civ-Ryskamp

EDITH HOROWITZ BROIDA,

Plaintiff,

vs.

MOIE J. L. TENDRICH,

Defendant.

ORDER DENYING MOTION FOR VISITING JUDGE

The above-styled case is presently before The Honorable Kenneth L. Ryskamp, having been assigned to said Judge under the blind filing system of the Southern District of Florida. Under the governing federal statutes and applicable law, any motion to disqualify a judge must, in the first instance, be addressed to the judge presiding over the particular case. In the event that recusal is granted, the case

then is assigned to another judge of the Southern District of Florida under the same blind random assignment system of the court.

Upon consideration and for the reason that the motion of the plaintiff has not been heretofore presented to Judge Ryskamp for his consideration, it is

ORDERED, ADJUDGED AND DECREES that said motion be, and the same is hereby, DENIED without prejudice to the plaintiff to file such motion as she deems appropriate with Judge Ryskamp.

DONE AND ORDERED in chambers at the United States Courthouse, Federal Courthouse Square, Miami, Florida, the 2nd day of October, 1987.

JAMES LAWRENCE KING

JAMES LAWRENCE KING
CHIEF U. S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: Hon. Kenneth L. Ryskamp
Edith Broida, Esq.
Roy Wood, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 87-1310-CIV- RYSKAMP

EDITH HOROWITZ BROIDA,

Plaintiff,

vs.

MOIE J. L. TENDRICH,

Defendant

_____/

FINAL JUDGMENT

On September 18, 1987, this court granted the defendant's motion to dismiss the complaint. The plaintiff filed a motion to vacate this order and a motion for the court to recuse itself. Both motions were denied on September 29, 1987. The plaintiff also asked the Chief Judge to assign this case to another judge. This motion was denied on October 2, 1987. The plaintiff then filed a motion on October 2, 1987 to disqualify the undersigned

pursuant to 28 U.S.C. Sec. 144. It is apparent that this motion, filed two weeks after the court dismissed the complaint, is not timely. Davis v. Cities Service Oil Co., 420 F2d 1278 (10th Cir. 1970). Accordingly, the plaintiff's motion is denied and it is

ORDERED AND ADJUDGED that final judgment be entered for the defendant and against the plaintiff.

DONE and ORDERED at the United States District Court, Miami, Florida this 16 day of November, 1987.

Kenneth L. Ryskamp
UNITED STATES DISTRICT JUDGE

cc: Edith Broida, Esq.
Roy Wood, Esq.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 87-5921
Non-Argument Calendar

EDITH HOROWITZ BROIDA,
Plaintiff, Appellant

versus

MOIE J. L. TENDRICH,
Defendant-Appellee.

Appeal from the United States
District Court for the Southern
District of Florida

(August 4, 1988)

Before Kravitch, Anderson and Cox,
Circuit Judges.

PER CURIAM: AFFIRMED. See 11th Cir.
R. 36-1.

"Costs taxed against plaintiff-appel-
ant."

Judgment entered: August 4, 1988
For the Court: Miguel J. Cortez

By: Karlen McNabb

(Initials: Pak, ERC, RA)
ISSUED AS MANDATE: Sep 1, 1988
cc w/enclosure (judgment) to:
Edith Broida
Roy Wood

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 87-5921

Edith Horowitz Broida,
v. Plaintiff-Appellant
Moie J. L. Tendrich
Defendant-Appellee

ORDER:

Appellant's motion for stay of mandate, construed as motion for recall of mandate, is DENIED.

Appellant's motion for extension of time to file motion for rehearing, construed as extension of time to file petition for rehearing to and including September 26, 1988, is DENIED.

/S/ PHYLLIS A. KRAVITCH
UNITED STATES CIRCUIT JUDGE
(October 4, 1988)